

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1800 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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GANESHBHAI KUBERBHAI SOLANKI

Versus

J.V. VYAS, DIRECTOR OF MUNICIPALITIES, GUJ.STATE &  
ANR.

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Appearance:

MR AM MITHANI for Petitioner  
MR MD GOHEL for Respondent No. 1  
MR YV SHAH for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. None of the respondents have filed reply to the Special Civil Application and as such, the averments made therein stand uncontroverted.

2. The facts giving rise to this Special Civil Application are that the petitioner had worked as a Workcharged Karkun for a period of five years in the P.W.D. of District Panchayat, Mehsana, prior to his appointment as a Mistri (Carpenter) in P.W.D. of Unjha Municipality, the respondent No.2 herein. Under the order dated 18th April 1970, the respondent No.2 has appointed the petitioner as Mistri, which he joined on 4th May 1970. Though initially the appointment of the petitioner was on temporary basis, later on he was confirmed on the said post by respondent No.2. In the Municipality, there were other departments including the department of public works. In the year 1972, the respondent No.2 started giving water connections to the residents. The petitioner was transferred from P.W.D. to Water Works Department of respondent No.2 in the year 1972. The respondent No.2, in its meeting held on 25th June 1982, passed a resolution for increasing strength of staff. In the said resolution a new post of Water Works Supervisor was sought to be created. The resolution has been sent for approval to the Government. The Director of Municipalities of the Government of Gujarat, under its letter dated 29th January 1982, though granted sanction to increase strength of staff by appointing Water Works Supervisor, but a condition has been imposed that the post of Mistri has to be abolished. On this post of Mistri, as stated earlier, the petitioner was working since 4th May 1970. In pursuance of the said letter of the Director of Municipalities, the respondent No.2 had made a resolution on 25th March 1983 resolving therein to abolish the post of Mistri. In pursuance of the said resolution, under the order dated 21st March 1984, the respondent No.2 has directed the petitioner to hand over charge of the post of Water Works Supervisor. The petitioner filed this petition in which he has challenged the order annexure 'D' dated 29th January 1983 of the respondent No.1 and the resolution dated 25th March 1983 of the respondent No.2 abolishing the post of Mistri and the order dated 21st March 1984 of respondent No.2 under which he was directed to hand over charge to the said post.

3. This writ petition has been admitted by this Court on 30th March 1984. This Court has issued notice to the respondents and ad-interim stay against the abolition of the post in question has also been granted. On 6th September 1984, rule was issued and ad-interim stay granted on 30.3.84 was ordered to be continued till further orders. It is not in dispute that the interim relief granted by this Court still continues for all

these years and the petitioner is working on the post of Mistri. This post of Mistri is not abolished so far.

4. After filing of this writ petition, the petitioner has amended the petition. By amendment, the petitioner has brought on record further facts which are relevant and material to the controversy which has arisen in the present writ petition. The resolution has been made by the respondent No.2 on 23rd April 1963 resolving therein to create a post of Mistri in place of existing post of sub mistri. The Development Commissioner, under its order dated 17th September 1964, granted sanction to the Corporation for post of Mistri. Earlier on this post, one Shri Brijlal Govind was working as sub Mistri who was temporarily posted. Later on the petitioner has been appointed on this post, and he was also confirmed. The petitioner has further stated that he was discharging duties of Mistri in Water Works department in addition to his duties in P.W.D. Other factual averments have also been made.

5. The learned counsel for the petitioner contended that the respondent No.1 has committed a patent error in making order of abolishing the post of Mistri. The post of Mistri has been sanctioned in 60s with prior approval of respondent No.1. There was no proposal for abolition of the said post. It has next been contended that the petitioner has acquired a right on the post of Mistri and the decision taken to abolish the post of Mistri will render him jobless. In case the post of Mistri is ordered to be abolished and the post of Supervisor has to be created, then the petitioner has to be given that post. Further contention has been made by the learned counsel for the petitioner that the order which effects the very existence of the petitioner has been made by respondent No.1 without giving any notice or opportunity of hearing.

6. On the other hand, the learned counsel for the respondent No.2 states that he has no objection in case this writ petition is allowed. The learned counsel for the respondent No.1 contended that prayer has been made by respondent No.2 for creation of further post to respondent No.1 who was fully competent to approve the creation by putting some reasonable condition. If in the Water Works Department the Supervisory's post has been ordered to be created then a condition of abolition of the post of Mistri has rightly been put by the respondent No.1.

7. I have given my thoughtful considerations to the

submissions made by the learned counsel for the parties.

8. From the document annexure 'C', letter of respondent No.2 to respondent No.1, it is borne out that a request has been made for increasing of staff for administration of Unjha Municipality. Staff for administration of this institution has been fixed before many years. It has been mentioned in this letter that after that time, the city has very much developed and income and expenditure of the institution has also been increased very much. The respondent No.2 has further stated that the present staff of the institution cannot deal with day to day work and it is affecting the administration of the institution. So a prayer has been made for increasing the staff. The respondent No.2 has not resolved to abolish the post of Mistri. It is necessary to mention here that the counsel for the respondents admit that the post of Mistri means the post of Carpenter. In the municipality earlier there was post of sub carpenter and under the Resolution dated 23rd April 1963, it has been converted to the post of Carpenter. The post of Water Works Supervisor was created by municipality due to increase of administrative work. The qualification for the post of Workcharged Supervisor has been laid down to be Mechanical/Electrical Diploma. The post of Carpenter is altogether a different post and it has no relevance whatsoever with the post of Water Works Supervisor. It cannot be equated with the post of Water Works Supervisor. The respondent No.1, while making the order dated 29th January 1983, has not given any reason whatsoever why approval has been granted to sanction of the post of Water Works Supervisor on a condition to abolish the post of Carpenter. It is not the case of respondent No.1 or respondent No.2 that it is not in need of the post of Carpenter (Mistri). Another important fact has not been considered that the post of sub Carpenter was in existence for last many years and that post has been upgraded to the post of Carpenter. The petitioner has been appointed on this post and he was confirmed. He acquired right on this post and the same could have been abolished without any cogent and justifiable reasons, much less, the respondent No.1 could not have abolished this post on which the petitioner acquired the right and lien, without giving him an opportunity of hearing. The petitioner was a permanent employee and his services could not have been dispensed with in the way and fashion as it is sought to be done in the garb of abolition of the said post. It is not the case of respondent No.1 that necessity has arisen for abolishing the post of Carpenter. Even if it is assumed that the post of Water Works supervisor could have been

sanctioned on a condition of abolition of the post of Carpenter, then too, the respondent No.1 should have alternatively provided some other post to the petitioner, which is not the case here. It is true that creation of post was subject to approval of respondent No.1, but when the respondent No.2 has not recommended for abolition of any post, I find sufficient merits in the contention of the counsel for the petitioner that respondent No.1 has no competence to order for abolition of that post. The respondent No.1 should have restricted its consideration to the question whether creation of post of Water Works Supervisor should be approved or not, but it could not have passed the order moreso, when the petitioner acquired lien on the post, to abolish that post held by the petitioner. This aspect has altogether been ignored by the respondent No.1 while making the order impugned in this Special Civil Application. It is a case of creation of additional post but the respondent No.2, due to increase of workload has suggested for creation of post but it has not demanded abolition of some other post. It is understandable that in case such proposal would have been made by respondent No.2, then the respondent No.1 could have necessarily made such an order, but not otherwise. I find sufficient merits in the contention of the counsel for the petitioner also that the order dated 29th January 1983 could have been made by respondent No.1 after giving opportunity of hearing to the petitioner. He is the person who is affected by this order. His services have been put at stake and as such, before abolishing the said post, on which the petitioner acquired lien, basic principles of natural justice could have been followed. So far as other contention of the learned counsel for the petitioner that in case the post of Carpenter has been ordered to be abolished, then the petitioner should have been given the post of Water Works Supervisor is concerned, it is suffice to say that this contention is difficult to accept. The qualifications

for the post of Water Works Supervisor is prescribed to be Diploma in Electrical/Mechanical Engineering and it is not the case of the petitioner that he has that qualifications. From this Special Civil Application it comes out that the petitioner is only possessing the qualification of Matriculate.

9. In the result, this writ petition succeeds and the same is allowed. The order of the respondent No.1 dated 29th January 1983, annexure 'D' to the extent it relates to abolition the post of Carpenter (Mistri), is set aside. On setting aside of the order of respondent No.1 dated 29th January 1983, to the extent of abolishing

the post of Mistri (Carpenter), the consequential resolution of respondent No.2 dated 25th March 1983, annexure 'E' and the consequential order on this resolution dated 21st March 1984, annexure ``F' automatically stand quashed and set aside. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)